IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17069 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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DIPAK SHANTILAL CHAUDHARY

Versus

PURBAI RAMJI BHOJA HARIJAN

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Appearance:

1. Special Civil Application No. 17069 of 2003

MR NV ANJARIA for Petitioner No. 1

MR KIRTIDEV R DAVE for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 01/10/2004

ORAL JUDGEMENT

1. By way of this petition, the petitioner has challenged the order dated 15/07/2003 passed by the learned Civil Judge (S.D.), Anjar-Kachchh, below exh.64

in Civil Misc.Application No.16 of 2000 (Old 12 of 2000), at Annexure `A' to the petition.

2. Heard learned counsel for the parties and perused the relevant documents on record. On going through the order of the trial Court, it clearly transpires that the order has been passed under misconception of law. There is nothing in the provisions of the Advocates Act, 1961 which debars an Advocate from deposing in a suit proceeding or from giving evidence in any form in a Court of law. In the present case, if the Advocate concerned is not representing any of the parties to the suit, then he can be called as a witness, since he had signed the original documents, which were the subject of challenge before the trial Court. Hence, the application exh.64, the affidavit of Advocate is required to be placed on record and the parties concerned can cross-examine the said person i.e. the advocate.

3. With the aforesaid direction, the petition stands partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. Jhaveri, J.)

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